FOR ARGUMENT

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1261

EARL L. BUTZ, SECRETARY OF AGRICULTURE,
Appellant

vs.

KAREN HEIN, et al.,
Appellees

No. 75-1355

KEVIN BURNS, COMMISSIONER, Iowa State Department Social Services,
Appellant

vs.

KAREN HEIN, et al.,
Appellees

On Appeal From The United States District Court for the Southern District of Iowa

Brief Amici Curiae in Support of Appellees

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STATEMENT OF INTEREST OF AMICI

This Brief Amici Curiae is filed without motion, as is permitted by Rule 42 of the Court, the prior consent of the parties have been obtained and sent under separate cover to the Clerk of the Court.

Amicus Sandra Jenay Chek is a plaintiff in analogous litigation against appellant Secretary of Agriculture. *Chek*

v. Butz, ... F.Supp. .... (N.D. Calif. No. C-75-0559-CBR, June 4, 1975 and March 9, 1976), Ninth Cir. No. 75-2843. Because this Court's disposition of the present cause will directly affect the outcome of her appeal, amicus Chek has set forth her case in this brief amici curiae.

Amicus Food Law Center of California Rural Legal Assistance and amicus Food Research and Action Center are each public interest law firms that regularly litigate matters relating to the food and nutritional problems of low-income Americans. The Food Law Center was counsel for amicus Chek before the district court and continues in that capacity.

Because the present cause involves a construction of the Food Stamp Act of 1964, as amended, which may affect the access to adequate nutrition for both amicus Food Law Center and amicus Food Research and Action Center's clients, amici submit the following brief.

ARGUMENT

Introduction and Summary of Argument

Amici will address the significant issues of national nutrition and education policy which underlie this case as well as the specifically germane questions of statutory construction. Exclusive of the constitutional questions broached herein, which we will not address, Amici do urge this Court to reach the following questions:

(1) Whether the Food Stamp Act gives authority to the defendant-appellant Secretary of Agriculture to define as "income" Social Security Act education assistance entitlements which are expressly for non-subsistence purposes.

(2) Wholly independent of that query, whether the regulation at issue was promulgated in accordance

with the requirements of the Administrative Procedure Act.

In order to understand the meaning of the term "income" as it is used in the Food Stamp Act, Amici argue that it is necessary for the Court to look into the legislative development of the educational and removal-of-dependency mandate of enactments paralleling the Food Stamp Act. These enactments were the product of an evolving Congressional awareness of the positive impact of enhanced educational opportunities in the reduction of poverty and dependence. Hence, part I and part II are a necessary prelude to part III which addresses the crux of this case, the meaning of "income" under the Food Stamp Act of 1964, as amended.

Specifically, in both the case of appellee Hein and the case of amicus Chek supplemental special welfare benefits were obtained to meet the extra expense of the non-subsistence pursuit of higher education. Each had practical vocational goals in mind and the federal programs that afforded them the opportunity to escape the poverty cycle were grounded in the Congressional recognition that supplemental resources were a *sine que non* to their undertaking such educational opportunities.

"Income" has been given a sensible meaning by the U.S. Department of Health, Education, and Welfare and this Court in the context of the subsistence Aid to Families with Dependent Children program under Title IV-A of the Social Security Act of 1935, as amended.

The continuity of legislative purposes of federal education assistance, income security, and adequate nutrition guarantee laws is an integral element to the context of the term "income" and its construction as a "current

availability" concept under the Food Stamp Act of 1964, as amended.

In part IV, Amici discuss the procedural genesis of the USDA regulation here under challenge and show that the three step public comment objectives of 5 U.S.C. § 553 were totally subverted by the actual course of appellent Secretary Butz's rulemaking.

1. The Role of Education and Income Maintenance Programs in Fostering Escape from the Poverty Cycle.

One of the traditional roles of American education has been to broaden opportunities for productive, influential, and rewarding participation in the affairs of society by developing those skills and entry credentials necessary for economic survival and social satisfaction.

The idea of education for all grew gradually.[1] In this country we have extended the opportunity of education to more and more of our citizenry, by a steady increase in the quantity and quality of the educational experiences available (including supportive services). As the quality of the education experiences and supportive services have grown, there has also been a marked increase in the quality of skills and competencies demanded in the job market. Thus, demographic studies beginning in the late 1950's found a new configuration to American poverty attributable to undereducation and training and not to social, psycho-

1. Certainly one of the earliest and most notable American advocates of universal educational opportunity was Thomas Jefferson. In his *Notes on Virginia* (1784), he urged enactment of a law which would

> "provide [for] an education adapted to the years, to the capacity, and the condition of every one, and directed to their freedom and happiness."

A. Koch and W. Peden, editors, *The Life and Selected Writings of Thomas Jefferson*, pp. 187-292, at 263 (Modern Library Edition, 1944).

logical, or physical factors. It has been observed that the main characteristic shared by contemporary applicants for public assistance was a low level of education and training and that automation is a key factor in the loss of the last job held.[2] These changes and causes have been found to be continuing in even the most current literature.[3]

The federal government has undertaken a major role in fostering the accessibility and quality of educational opportunity.[4] That undertaking has been embodied in a number of approaches providing federal subsidies to institutions as well as to individuals and would seem to be an economically well-founded policy because education has been credited for

2. R. M. Hilliard, "New Techniques in the Rehabilitation of Welfare Dependents", in M. S. Gordon, editor, *Poverty in America*, 267-277 (Chandler, 1965). See also M. B. Folsom, "Measures to Reduce Poverty", *Ibid.* 62, 65.

3. The Council of Economic Advisors made an extensive study of unemployment in their Annual Report to the President in 1975. *Economic Report of the President—Transmitted to the Congress February 1975*, 86-127 (GPO, 1975). They concluded at p. 109 that:

> "[a] pronounced inverse relation exists between education and unemployment."

In their 1976 Annual Report, they found that:

> "[t]he increase in the unemployment rate was largely a consequence of unemployment arising from the loss of a job, particularly among adult men and women."

Economic Report of the President—Transmitted to the Congress January 1976, 80 (GPO, 1976).

4. Legislative developments on the education front in addition to the 1956, 1968 and 1974 amendments to the Social Security Act and the Higher Education Act of 1965 discussed in this brief *infra*, pp. 3, 5 include the Higher Education Facilities Act of 1963 (P.L. 88-204, 77 Stat. 363) which provided federal grants and loans for college construction. In 1966, when the largest appropriations and expenditures were made, $67 million was spent on construction and $200 million on loans. To further meet the subsistence needs of needy students, the Higher Education Act of 1965 (P.L. 89-329, 79 Stat. 1219) included a work study program providing a federally subsidized part-time jobs program.

about one-fifth the growth of the U.S. economy from 1929 to 1957.[5]

The social services mandate of the Social Security Act of 1935[6], the Food Stamp Act of 1964[7], and the Higher Education Act of 1965 student assistance provisions[8] share the characteristic of being indirect legislative action to ameliorate if not eradicate American poverty. Thus they are of a piece, from the Workers Progress Administration (WPA) to Comprehensive Employment and Training Act (CETA) programs which the Congress has created to make the poor more employable, to find them jobs, and even to employ them publicly.

The Jeffersonian conception of education as the key to American social integration and mobility has been reinforced since World War II by the theorists of human capital who showed that individual and societal investments in education yielded ample economic and social re-

5. E. F. Denison, *The Sources of Growth in the United States and Alternatives Before Us* (N.Y. 1962). See also W. Lee Hansen, "Rates of Return to Investment in Schooling in the United States" in M. Blaug, editor, *Economics of Education 1,* 137 (Penguin, 1968) and B. A. Weisbrod, "Education and Investment in Human Capital" in D. Levine and M. Bane, editors, *The "Inequality" Controversy: Schooling and Distributive Justice,* 132 (Basic Books, 1975).

6. 74th Cong., c. 531 (Aug. 14, 1935 § 401, 49 Stat. 627, amended in 1956, 84th Cong. c. 836 (Aug. 1, 1956), Title III, 70 Stat. 848; in 1968, P.L. 90-248 (Jan. 2, 1968) Title II, 81 Stat. 877 *et seq.;* and in 1975, P.L. 93-647 (Jan. 4, 1975) § 2, 88 Stat. 2337.

7. P.L. 88-525, August 31, 1964, 78 Stat. 703, codified at 7 U.S.C. §§ 2011 *et seq.*, amended in 1971, P.L. 91-671 (Jan. 11, 1971), 84 Stat. 2048, again in 1973, P.L. 98-86 (Aug. 10, 1973), 87 Stat. 221, twice again in 1974, P.L 93-335 (July 8, 1974), 88 Stat. 391; P.L. 98-347 (July 12, 1974), 88 Stat. 340, once in 1975, P.L. 94-4 (Feb. 20, 1975), 89 Stat. 6, and once in 1976, P.L. 94-339 (July 5, 1976), 90 Stat. 799.

8. P.L. 89-329 (Nov. 8, 1965), 79 Stat. 1219, 1232, codified at 20 U.S.C. § 1070 *et seq.*, amended in 1972, P.L. 92-318 (June 23, 1972) Titles I, II, 86 Stat. 247, 381.

turns.[9] Those returns have been analyzed in both their direct[10] and indirect aspects[11] and have been found both positive and substantial.[12]

9. M. Blaug has edited a thorough two-volume anthology, *Economics of Education* (Penguin, 1968); "Symposium on Rates of Return to Investment in Education", II *The Journal of Human Resources—Education, Manpower, and Welfare Policies,* no. 3 (1967) 291-374; J. E. Meade, *Efficiency, Equality and The Ownership of Property,* 30-32 (Harvard Univ. Press, 1965); G. Becker, *Human Capital* (Columbia Univ. Press, 1964).

10. W. Lee Hansen, "Rates of Return in Investment in Schooling in the United States", *supra,* footnote 5, in his cost-benefit analysis finds a rate of return of never less than 10% for each year of college. See J. Mincer, "Youth, Education, and Work", in *The "Inequality" Controversy,* supra, footnote 5, 185-194.

11. M. Blaug in his own contribution to his edited anthology *Economics of Education,* supra, footnote 6, "The Rate of Return on Investment in Education" at 243 has at least partially catalogued the indirect benefits of education as:

> "(1) the current spillover income gains to persons other than those who have received extra education; (2) the spillover income gains to subsequent generations from a better educated present generation; (3) the supply of a convenient mechanism for discovering and cultivating potential talents; (4) the means of assuring occupational flexibility of the labour force and, thus, to furnish the skilled manpower requirements of a growing economy; (5) the provision of an environment that stimulates research in science and technology; (6) the tendency to encourage lawful behavior and to promote voluntary responsibility for welfare activities, both of which reduce the demand on social services; (7) the tendency to foster political stability by developing an informed electorate and competent political leadership; (8) the supply of a certain measure of 'social control' by the transmission of a common cultural heritage; and (9) the enhancement of the enjoyment of leisure by widening the intellectual horizons of both the educated and the uneducated."

12. The domain of economic returns from investment in academically a somewhat controverted field, (compare C. Jencks et al., *Inequality: A Reassessment of the Effect of Family and Schooling in America,* [Basic Books 1972]; *"Perspectives on Inequality: A Reassessment of the Effect of Family and Schooling in America",* 43 *Harv. Ed. Rev.* 37-164 [1973]; D. M. Levine and M. J. Bane, editors, *The "Inequality" Controversy: Schooling and Distributive*

Recently the Bureau of Labor Statistics has published a survey of American women as heads of households, their employment opportunities and their earnings potential.[13] Between 1940 and 1975, the number of female-headed households doubled. From just 1970 to 1974, the number of poor female-headed households rose 21 percent, while male-headed households declined by 17 percent. Since 1970, the overall unemployment rate experienced by such women has been a consistent 3 to 4 percentage points ahead of the rate for men. Perhaps most pertinent to the facts of this case, the occupation and hence earnings of these working women directly reflected their level of education and training. Hence,

> "[t]hose who had never married were considerably younger and thus had more formal schooling than other women headed families. White single heads were more likely to hold professional-technical jobs than divorced, separated, and widowed white women. Black single heads were more likely to hold clerical jobs than other black women headed families."[14]

Justice, supra, footnote 5, although the Congressional record of commitment is clearly without equivocation. By a veto override in 1975, Congress enacted P.L. 94-94, 89 Stat. 468 which appropriated $2,439,309,000 for higher education in fiscal year (FY) 76, of which $240,093,000 was for supplemental opportunity grants such as that which was awarded to amicus Chek. 89 Stat. 469-470. This represents an increase of $306,238,000 over the amount appropriated for FY 75. And again, on September 30, 1976, also by a veto override, Congress passed P.L. 94-439 (H.R. 14232), the appropriation legislation for FY 77. The amount for Title IV (student assistance) being $352,670,000.

Analogously in the case of social services financing, the Social Security Act removal of dependency mandate which began in 1956, had been increased by FY 1974 to a $2.5 billion authorization.

13. B. M. McEaddy, "Women Who Head Families: A Socio-economic Analysis", 99 *Monthly Labor Rev.,* no. 6, 3-9 (June, 1976).

14. *Ibid* at 6.

The facts herein speak poignantly to the lack of wisdom which underlies USDA's income policy. Today appellee Hein is a registered nurse who no longer must rely upon AFDC to support herself and her family as relief afforded by the court below permitted her to complete her education without the Hobson's choice between adequate food and an escape from the poverty cycle that has stymied amicus Sandra Chek and leaves her and her sons dependent even today on societal largesse.

While plaintiff-appellee Karen Hein and amicus curiae Sandra Chek are female-heads of households and while their potential rate(s) of return as a nurse and an accountant respectively may be less than males could anticipate in the same occupations[15], the latest U.S. Department of Labor data[16] shows a marginal dollar value for their increased educational attainment for four years of college of $1,451 per year.[17]

The societal assurance of access to a nutritionally adequate diet for needy Americans has been more recently

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15. On the basis of a refined study of monthly starting salaries, amicus Chek's choice of accounting would appear propitious as the monthly differential for June, 1975 was only $4.00 ($986 for women and $990 for men). F. S. Endicott, "Trends in Employment of College and University Graduates in Business and Industry, 1975", *29th Annual Report, Northwestern University* (1974).

16. Women's Bureau, Employment Standards Administration, U.S. Department of Labor, "The Earnings Gap Between Women and Men", Table 5 "Comparision of Median Income of Year-Round Full-Time Workers, by Educational Attainment and Sex, 1974" at 10.

17. Even using 1960 data, appellee Hein, who is 31, and a divorcee, has an expectancy of approximately 33.6 years in the labor force and thus her cumulative economic benefit would be of the order of $48,756.00. Similarly, amicus Chek, who is 35 and a divorcee, has an expectancy of 28.8 years in the labor force and thus her cumulative economic benefit would be of the order of $41,788.00. S. M. Speiser, *Recovery for Wrongful Death, Economic Handbook,* (Bancroft-Whitney, 1970) 179, Table 72.

established as an American value[18] than has that of educational opportunity. As the scope of the opportunity to be self-sufficient in food production has narrowed, the breadth of the government's subsidy of food production and the delivery of food or the means for access to same, have expanded.[19] Just as the Congress has developed a multifarious catalog of direct and indirect education incentive, subsidy, and assistance programs, a parallel collection of direct and in-kind food assistance programs have arisen for the young, the elderly, and needy families.[20]

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18. For example, the National School Lunch Act of June 4, 1946, c. 281, 60 Stat. 230 which makes it Congressional policy to provide for an adequate supply of food for a nationwide network of non-profit school lunch programs. 42 U.S.C. § 1752. See § 2 of the Food Stamp Act of 1964 as amended (7 U.S.C. § 2011) and the recent House and Senate Resolutions regarding the "right-to-food". H.R. Con. Res. 737, 122 Cong. Rec. H 10715 (daily edition, September 21, 1976) and S. Con. Res. 138, 122 Cong. Rec. S 15124, S 15928 (daily edition, September 1 and 16, 1976) Cf. "The Right-to-Food Resolution", Hearings before the Subcommittee on International Resources, Food and Energy of the House Committee on International Relations, 94th Cong., 2nd Session (June 1976); Senate Report No. 94-1316.

19. In the case of the food stamp program, the record of Congress's developing awareness of nutritional risk among low-income American households and their legislative efforts to maximize participation by eligible households as well as their expanding fiscal commitment to the goal of guaranteeing for all access to the means to purchase a nutritionally adequate diet are well essayed in *Bennett v. Butz*, 386 F.Supp. 1063-65 (D. Minn. 1974) and *Rodway v. USDA*, 514 F.2d 809, 818-24 (D.C. Cir. 1975). Similarly in the case of the congregate elderly feeding program under Title VII of the Older American Act of 1965 as amended see *Kennedy v. Mathews*, 413 F.Supp. 1240, 1241-42 (D.D.C. 1976).

20. The latter reflect Congressional recognition of the fundamental importance of access to food. The role of the food stamp program has been all the more vital as the one American social welfare program keyed to make twice a year benefit adjustments to reflect rises in the cost of food. 7 U.S.C. § 2016(a). Professor Joseph Powell of the University of Wisconsin has graphically testified to the bitter impact of the recent food price upward spiral.

> "[T]he disproportionately large share of food expenses in the budgets of poor people has caused the poor person's price index to advance faster than the regular consumer price index. The result is a disastrous decrease in the purchasing power of the poor. It also means that the poor have suffered far more grievously from the recent inflationary spiral than have the affluent and the middle class.
>
> "... Several alternative results will occur due to this extraordinary inflationary price squeeze on the poor. *If a poor family pays for non-food necessities first*, then the family will either be unable to purchase the same (already meager) diet that it obtained previously, or it will have to experience a substantial negative asset movement (i.e., the sale of assets or increased debt) in order to obtain its previous food quotient. *If a poor family pays for food necessities first*, then the family will be unable to pay for such crucial necessities as utilities, medical expenses, clothing and/or other items; in the alternative, in order to subsidize these other necessities, the family will experience a significant negative asset movement. In sum, the current inflationary food spiral has been most destructive to poor people's already vulnerable economic and nutritional status.
>
> "... Finally, in addition to the general across-the-board price increases in food, the poor experienced severe food price increases. This occurred because of the following: Although the elasticity of food demand is relatively low in comparison with other budget items, there nevertheless is *some* elasticity with most food items. All consumers tend to alter the composition of their food purchases in response to price increases. People tend to reduce both the quantity and the quality of food purchases as prices increase. Thus, each income class, in attempting to maintain its food budget within its income capabilities, will try to shift to lower-cost, lower-quality foods in order to compensate for increased food costs. For the poor, however, who already are consuming generally the lowest cost and lowest quality food items, there is virtually no flexibility to switch to lower cost food items. Thus, they are unable to cushion the food price increases by switching to cheaper food items, the demand for such cheaper items increases and such food items tend to become further price-inflated.
>
> "Evidence of this price increase differential is readily available. For example, poultry went up 144 percent (relative to its 1967 level) while beef went up only 75 percent; hamburgers increased by 89 percent while sirloins increased by only 60 percent. Although the price of poultry has come to occupy a larger proportion of the protein input of the poor because it still was the cheapest source of meat protein. As a result, for many poor people the increases in prices were so

This case revolves around their auspicious intersection in the context of heads of needy American households who

desire to escape the poverty cycle through education and training.[21]

II. The Removal-of-Dependency Mandate of the Social Security Act Precludes the Secretary of Agriculture from Treating Non-Subsistence Entitlements as Income.

Underlying the many federal education and training programs—and especially the removal-of-dependency mandate of Section 2001 of the Social Security Act of 1935, as amended — is the elementary notion that such programs

high that they actually had to consume less of all products, particularly those vital to good health and productivity: protein products, dairy products, and some vegetables."
(Emphasis in the original; footnotes omitted.)

National Nutrition Policy Hearings, Part 3, "Nutrition for Special Groups" before the U.S. Senate, Select Committee on Nutrition and Human Needs, 93rd Cong. 2nd Sess. at 849, 852-854 (1974).

Since just June, 1974, when those Senate hearings were held, USDA's retail food price index for food purchased for home consumption has increased an additional 12.4 percent. U.S. Department of Agriculture, *National Food Situation* (NFS-157), Table 10 "Retail Food Price Indexes and Consumer Price Index, selected periods", at 29 (September, 1976).

21. Yet there should be no misapprehension of the facts as to the magnitude of the college student population participating in the food stamp program. Neither appellant Hein nor amicus Chek are representative of any middle class segment of the food stamp program. Much to the contrary they are truly needy heads of households whose attempts to better themselves and the lot of their children have been frustrated by USDA's overbroad motion of what may be treated as "income" under the Food Stamp Act.

Most recently the staff of the U.S. Senate Select Committee on Nutrition and Human Needs reviewed the entire corpus of Bureau of Census, Department of Agriculture, and U.S. House of Representatives, Committee on Agriculture data on college students participating in the program and prepared a summary entitled "Food Stamp Program Profile, Parts 1 and 2", stating in pertinent part:

> "[USDA's study—'Characteristics of Food Stamp Households, September, 1975'—] found that only 1.3 percent of the food stamp caseload were students at institutions of postsecondary education in September, 1975. The number of student food stamp recipients, according to the USDA study, is 202,000. The House [Agriculture Committee] study also contains information on this matter; the study found that 204,700 students in non-welfare households participated in the program in April, 1975. (Most student food stamp participants do live in non-public assistance households consisting largely of welfare mothers and their children.)
>
> "The House study also found that many student food stamp recipients work as well as attend school. Over half of all student-headed households have earned income."
>
> "Food Stamp Program Profile, Parts 1 and 2", Committee Print, 94th Cong. 2nd Sess. (August, 1976) at p. 7.

Thus appellee Karen Hein and amicus curiae Sandra Jenay Chek are perhaps atypical student food stamp program participant households as they are both welfare mothers caring for dependent children. At the same time they are the archetypal beneficiaries (along with society at large) of the federal education assistance programs which focus upon making available the economic and social benefits of higher education to qualified students.

22. For example §§ 101 and 401 of the Higher Education Act of 1965 (P.L. 89-329, 79 Stat. 1219 and 1232) provide in pertinent part:

> "For the purpose of assisting the people of the United States in the solution of community problems such as housing, *poverty*, government, recreation, employment, youth opportunities, transportation, health, and land use by enabling the Commissioner [of Education, U.S. Department of Health, Education, and Welfare] to make grants to strengthen community service programs [i.e., educational program, activity, or service, 20 U.S.C. § 1002] of colleges and universities. . . ." (Emphasis added) 20 U.S.C. § 1001.

The section goes on to authorize the appropriation of $10 million for fiscal year 1972 and $10 million per year in increasing progressions.

> "It is the purpose of this part, to assist in making available the benefits of postsecondary education to qualified students in institutions of higher education by—
>
> "(1) providing basic education opportunity grants (hereinafter referred to as "basic grants") to all eligible students;
>
> "(2) *providing supplemental education opportunity grants* (hereinafter referred to as "supplemental grants") *to those students of exceptional need who, for lack of such*

will benefit society at large by allowing individual beneficiaries to become more productive members of society.[22] A corollary to this concept with particular applicability in the field of federal income maintenance programs is that investment in the education and training of public assist-

ance recipients — who would be largely unable to pay for such services on their own — provides an otherwise unavailable means for those persons to increase their earning power and thus to break out of the poverty cycle of underemployment, unemployment, family break-up, and welfare dependence.[23]

Recognizing after a course of time that subsidies to both rich and poor institutions of higher learning did not fully ensure access for the truly needy, the Congress in the

a grant, would be unable to obtain the benefits of a post-secondary education;

"(3) providing for payments to the States to assist them in making financial aid available to such students;

"(4) providing for special programs and projects designed (A) to identify and encourage qualified youths with financial or cultural need with a potential for postsecondary education, (B) *to prepare students from low-income families* for postsecondary education, and (C) to provide remedial (including remedial language study and other services to students; and

"(5) providing assistance to institutions of higher education."

(Emphasis added) 20 U.S.C. § 1070.

23. For example the Social Security Act Amendments of 1967, P.L. 90-248, § 204, 81 Stat. 821, 887 created a Work Incentive Program (WIN) in order to restore:

"families [with dependent children] to independence and useful roles in their communities. It is expected that the individuals participating in the [WIN] program. . . . will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families."

42 U.S.C. § 630.

See also the Comprehensive Employment and Training Act of 1973 (CETA) as amended, P.L. 93-203, § 2, 87 Stat. 839 creating an assortment of public service job opportunity and training programs wherein Congress' enunciated purpose includes the provision of:

"job training and employment opportunities for economically disadvantaged, unemployed and underemployed persons, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency. . . ."

29 U.S.C. § 801.

1950's embarked upon the strategy of loans and subsidies directly to needy students as an essential predicate to their equality of educational opportunity. While those educational assistance programs are quite varied in the scope and manner of their aid, appellee Hein and amicus Chek present this Court with the narrow issue of educational assistance which is exclusively available for non-subsistence purposes, in short, tuition, fees, books, and transportation to and from school.

The factual circumstances of appellee Hein are unambiguously set out in the record and accurately portrayed in Appellee's brief.[24] She is a divorced mother of two minor children. At all times pertinent to this action she and her children received cash assistance entitlements under the joint state and federal Aid to Families for Dependent Children (AFDC) program and have participated in the federal food stamp program. Title IV-A of the Social Security Act, 42 U.S.C. §§601 *et seq.*

Desiring to become self-supporting, Karen Hein has additionally sought out and participated in a social services Individual Education and Training Plan under which she has studied at St. Luke's School of Nursing in Davenport, Iowa, to become a registered nurse. Because appellee is a resident of Muscatine, Iowa, and because there is no comparable school in Muscatine, appellee has received a grant of $44.00 per month for daily automobile transportation between Muscatine and Davenport.[25] The entirety of that grant has been spent for travel.

That $44.00 monthly grant was a product of the Social Services program component of Iowa's state plan under

24. See generally Joint Appendix, Nos. 75-1261 and 75-1355, Stipulation One, Two, and Three, at 23-30.

25. It is approximately 25 miles in driving distance between Davenport and Muscatine, Iowa.

§402 of the Social Security Act of 1935 as amended[26] — all of which was spent on commuting expenses and none of which was available to appellee or her children for food purchases — was included as additional income in computing the purchase price that she was required to pay for her household's monthly food stamp coupon allotment; at the same time, the grant was specifically excluded from the catalog of allowable income deductions. Without the educational travel allowance, appellee had to pay $46.00 per month in order to obtain $94.00 worth of food stamps; however, with the education travel grant treated as income available for food-purchasing, she was required to pay $58.00 per month for the same $94.00 coupon allotment — a $12.00 monthly increase in her purchase price.

Similarly, amicus Sandra Chek is a divorced mother with two sons, Gary, age 14, and Christopher, age 5, who at the time of litigation, lived in Novato, California. Like the Hein household, the Chek family's primary means of subsistence had been from AFDC entitlements and food stamps. The Chek household had income of $27.00 per month from property owned in Milpitas, California, but this reduced the family's AFDC grant, dollar for dollar.

Their three-person food stamp monthly coupon allotment — $122.00 at the time their litigation was commenced in March, 1975 — made the critical difference in assuring minimally adequate nutrition for the Chek household. They spent their meager resources on only the bare necessities, substituting baking soda and shoes from private charities for such conventional items as toothpaste and new shoes.

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26. As is correctly pointed out by the Solicitor Bork in his Brief for Appellant Secretary Butz at 6, footnote 6.

> "Programs of this nature are currently authorized by Title XX of the Social Security Act, 42 U.S.C. (Supp. IV) [§§] 1397 *et seq.*"

In order to become self-supporting amicus Chek sought out and participated in federal Higher Education student assistance and California Educational Opportunity Program (EOP) grants which permitted her to complete one year of study in accounting under the College Re-entry for Women (CREW) program at the Indian River Junior College in Novato, California.

After starting school and experiencing both a rent increase and a food stamp purchase price increase, the Chek household had the following monthly expenses:

Rent	$175.00
Utilities	40.00
Food Stamp Purchase Price	64.00
Gas for school	26.00
Gas and insurance other than for school	18.00
Household, personal and miscellaneous expenses	15.00
School books and supplies	17.57
Child care to permit Ms. Chek to take an evening course	18.00
	$373.57

Household income was as follows:

AFDC grant	$235.00
Rent from Milpitas house after mortgage payment	27.00
Educational grants	60.00
	$322.00

Thus there was a monthly deficit of $51.57[27], which was met through personal loans and which, if her grants were excluded, for food stamp purposes, from consideration as

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27. Refer back to Professor Powell's pungent economic analysis of this "negative asset movement" footnote 20 *supra*.

income or if school books, supplies, and transportation were allowed as a deduction, would leave her economic situation tenuous but no longer impossible.

Ms. Chek was not required to pay tuition, and the college staff determined that she would incur school related expenses of $162 for school books and supplies, $260 for transportation and $180 for child care during the ten month school year. To meet these needs the college provided her with two education grants, one federal[28] and one state, each

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28. Under Title IV, § 413A of the Higher Education Act of 1965 as amended, Supplemental Education Opportunity Grants (SEOG) are made available to students such as amicus Chek "to assist in making the benefits of post-secondary education [to those] who, for lack of financial means, would be unable to obtain such benefits without such grants." 20 U.S.C. §§ 1070b *et seq.* As the Senate said in its report (No. 673) in pertinent part:

> "The pressing requirement for fresh, vigorous congressional action in the general field of student financial assistance cannot be emphasized too strongly. Information delineating the continuing upward spiral of the cost of education beyond the high school, the rapidly mounting size of high school graduating classes—beginning with the record-setting number of graduates in the June 1967 class—and the *aggravated plight of students who do not have the means to acquire education, demonstrates in clear terms the extent and depth of the problem.*
>
> "Surrounding the question of how best to increase the supply of trained manpower—at all levels—is the continuing shortage of trained, educated persons in many areas. Despite the creation of new programs for the support of highly trained persons in a number of specialized areas, the booming technological development of our economy is creating present and future shortage of competent, well-trained professional and technical personnel. Such shortages constitute a serious threat to continued technical and scientific progress, to military strength, to every area of research and development, to education itself, and to the highly important health and welfare programs advanced by this Congress."
>
> (Emphasis added) 3 U.S. Code Congressional and Administrative News, 89th Congress, 1st Session (1965) at 4053.

As is the case with each of the education assistance programs under Title IV of the Higher Education Act, amicus Chek was required

in the amount of $300 and together just enough to cover her education-related needs.

Ms. Chek was pursuing an Associate of Arts degree in accounting and had an outstanding academic record. When, in conformance with USDA policy, the California Department of Benefit Payments upheld Marin County's determination that her education grants were "income" for the purposes of the food stamp program and that her expenditures for school books, school supplies, and transportation were not permissible deductions, the Chek household was confronted with a Hobson's choice. Either Ms. Chek would have to drop out of school or drop out of the food stamp program because of the prohibitive food stamp purchase price. The former course would totally frustrate her strenuous efforts to fight her way out of the poverty-and-welfare cycle. The latter, would guarantee wholly inadequate food purchasing power and nutrition for Ms. Chek and her sons. During the pendency of the district court proceedings, the Chek household was able to continue participation in the food stamp program only by not paying bills, such as for utilities, and by going into debt to friends.

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to and did sign an affidavit as is required by § 498 of the Act which provides in pertinent part:

> "Notwithstanding any other provision of law, no grant, loan or loan guarantee authorized under this subchapter may be made unless the student to whom the grant, loan, or loan guarantee is made has filed with the institution of higher education which he intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), an affidavit stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution."
>
> 20 U.S.C. § 1088g.

The school year ended on June 13, 1976, as did the two educational grants, so that the household's food stamp purchase price substantially declined. Because of the district court's adverse ruling on June 4, 1975[29], Ms. Chek was financially unable to return to school for the 1975-76 academic year as well as this fall. Again, without the educational grants, she could not afford to attend; with them, she could not afford to participate in the food stamp program. Because of USDA's procrustean "income" policies, the Chek household has been forced to forego the opportunity to become self-sufficient in order to continue to benefit from the increased food purchasing power afforded by their $85.00 per month food stamp bonus.

Appellee Hein was a Congressionally-intended beneficiary of the removal-of-dependency mandate of the Social Security Act. That mandate had its genesis in the 1956 amendments to the Act (P.L. 880, August 1, 1956, 70 Stat. 807, 848) which amended the purposes of Title IV-A to authorize the states to provide services:

> "to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and *to help such parents or relatives to attain or retain capability for the maximum self support* and personal independence consistent with the maintenance of continuing parental care and protection." (Emphasis added)
> 42 U.S.C. §601.

The legislative history of the 1956 amendments makes it abundantly clear that this restatement of purpose reflects a deliberate Congressional plan to help AFDC recipients

29. *Chek v. Butz et al.*, ___ F.Supp. ___ (N.D. Calif. No. C-75-0559-CBR, Memorandum of Opinion and Order of June 4, 1975, and Summary Judgment of March 9, 1976), appeal docketed Ninth Circuit No. 75-2843.

break out of the poverty cycle. As Senate Report No. 2133, June 5, 1956 states in pertinent part:

> "Services that assist families to attain the maximum economic personal independence of which they are capable provide a more satisfactory way of living for the recipients affected. To the extent that they can remove or ameliorate the causes of dependency, they will decrease the time that assistance is needed and the amounts needed. For these reasons the availability of such services to families and individuals is a part of the effective administration of the public assistance programs and therefore a proper administrative expenditure by States in which the Federal Government shares."
>
> 3 *U.S. Code Congressional and Administrative News*, 84th Cong., 2nd Sess. (1956) at 3906.

The removal-of-dependency mandate added to §401 of the Act in 1956 has never been derogated from.[30] In fact, the 1968 amendment to the Social Security Act added similar language of purpose to §402(a) of the Act generally setting forth the criteria which the Secretary of HEW was to consider in passing upon the acceptability of state assistance plans submitted pursuant to Title IV-A.[31]

Although §402(A)(14) was repealed by the Social Security Amendments of 1974 (P.L. 93-647, 88 Stat. 2346), both

30. Not the least of the indicia of which has been the fiscal commitment reflected in Congressional appropriations which have steadily increased. See footnote 15, *supra*.

31. Providing in pertinent part:
"(14) provide for the development . . . . of a program for such family services . . . . as may be necessary in light of the particular home conditions and other need of such child, relative, and individual, in order to assist such child, relative, and individual to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development."
(Emphasis added) 42 U.S.C. § 602(a)(14).

the 75% federal funding provisions and the purpose language which originated with the 1956 amendments have been carried over essentially unchanged into the newly established Title XX of the Social Security Act. Section 2001 of the Act thus requires state services of the sort previously governed by Title IV-A to continued to be aimed at:

> "(1) Achieving or maintaining economic self support to prevent, reduce or eliminate dependency and
> "(2) Achieving or maintaining self-sufficiency including reduction or prevention of dependency."
> (codified at 42 U.S.C. §1397)

Clearly then it is only by a doctrine of administrative nullification of legislative prerogatives that the defendant-appellant Secretary of Agriculture can claim to invade the province of social services administered by the Secretary of Health, Education, and Welfare and mandated by the Congress over a term of twenty years.

III. Multiple Social Welfare Benefits the False Issue in the Case and the Meaning of Income.

Appellant Secretary of Agriculture in both the *Hein* and *Chek* cases has argued vehemently although without factual foundation that receipt of a transportation allowance in the case of appellee Karen Hein and a transportation, school books and school supplies allowance in the case of amicus Sandra Chek

> "effects an increase in the absolute amount of income the household has available for its usual expenses [and]
> "...frees a like amount of the household's income for other purposes." Brief for the Appellant Secretary of Agriculture in No. 75-1261, October Term, 1976, at 22 and 23.

There have been at least four analogous lawsuits[32] wherein two or more federal social welfare benefits were being received by a household and one of the federal agencies involved sought to treat those former benefits as income and thereby reduce the level of the latter benefits.[33]

In both the *Brown* and *Elam* cases, U.S. District Court Judge Young was confronted with the federal education program benefits — Work Study earnings in the *Brown* case and OASDI benefits in *Elam* — being treated as "income" for purposes of determining the level of entitlement under the AFDC program. Applicable to the plight of both

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32. *Brown v. Bates*, 363 F.Supp. 897 (N.D. Ohio 1973); *Elam v. Hanson*, 384 F.Supp. 549 (N.D. Ohio 1974); *Hamilton v. Butz*, 520 F.2d 709 (Ninth Cir. 1975); *Coleman v. Butz*, ___ F.Supp. ___ (W.D. Mich. 1976).

33. Appellant Secretary attempts to defend his regulations via a theory that the multiplicity of benefits to poor Americans under the panoply federal social welfare and education programs needed reform, specifically reform undertaken by his administrative fiat, making judgments as to their relative incentive effects, impact upon family stability, probability of administrative complexity and error, and programatic inequity. Brief for the Appellant in Dkt. No. 75-1261 at 20 and 21. The Solicitor makes a feeble parry:

> "Nothing in the Act requires the Secretary to ignore this fact." *Ibid.*

Amici's risposte is to acknowledge that certainly the Food Stamp Act does not prohibit the appellant Secretary from taking note of the facts as garnered in his *Report in Accordance with Senate Resolution*, 94th Cong. 1st Sess. (Committee Print. 1975) or in the twenty *Studies in Public Welfare* prepared in 1972 through 1974 for the use of the Subcommittee on Fiscal Policy of the Congressional Joint Economic Committee. The latter consider in great detail the policy significance of multiple benefits and make recommendations for legislative action. The fact that neither the 93rd nor the 94th Congress has addressed this problem area does not lead to the result of Congressional authority reverting to appellant Secretary out of a process akin to prescriptive easement (See Justice Black in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 588-589 [1952]) or out of the need for action alone (See Justice Frankfurter's concurrence that executive authority is not constitutionally coextensive governmental power and that the need for action alone cannot authorize it, *Youngstown, Ibid* at 603-634).

appellee Hein and amicus Chek, Judge Young held in *Brown*:

> "The participant must maintain student status to be eligible for the program.... This Congressional mandate constrains the Court to view the funds [as being] for the particular purpose of obtaining an education." 363 F.Supp. at 901.

He concluded:

> "Congress, through the Work-Study Program, has attempted to provide a vehicle for the indigent to use to escape the poverty cycle. If the money earned by the participants in the Work-Study Program is applied against other assistance programs, that vehicle's utility is much weakened, and in many cases totally destroyed. The Court does not believe Congress chose by enactment of the Work-Study Program to draw the cycle of poverty tighter, but rather was attempting to break its bonds upon untrained poor. The Court will not allow the defendants to defeat this beneficient purpose by their own interpretation of the law, especially when that interpretation, however faithful it may be to the letter of the law, totally defeats the spirit of the law, and serves only a sterile administrative purpose."
>
> 363 F.Supp. at 902-903.

More recently in *Elam,* Judge Young was confronted with the interface of §§202(d), 401 and 402(a) of the Social Security Act of 1935 as amended.

> "One program, OASDI under §202(d)(1) seeks to aid a recipient in obtaining an education while the other program, AFDC, seeks to assist in the care of dependent children in their own houses or the home of a relative". 384 F.Supp. at 552 and 553.

Thus he held[34] that

> "The Court must attempt to enforce both applicable statutes in such a manner that the overriding purposes of the two statutes are achieved, even if the words used in the laws and regulations leave room for a contrary interpretation. See *Markham v. Cabell,* 326 U. S. 404, 66 S.Ct. 193, 90 L.Ed. 165 (1945). Many cases have pointed out that the Social Security Act is a remedial statute, to be broadly construed and liberally applied. *See e.g., Haberman v. Finch,* 418 F.2d 664, 667 (2d Cir. 1969); *Conklin v. Celebrezze,* 319 F.2d 569 (7th Cir. 1963).
>
> "...In this case, the Court does not believe that Congress could have intended by one project to aid OASDI recipients who desire education by providing benefits while they pursue a full-time course of study and then by another program to reduce the amount of benefits paid on behalf of dependent children of that OASDI recipient. It amounts to the federal government holding out a promise of aid for education with one hand and at the same time with the other hand having the state government, spurred by federal regulations, destroying that promise of aid. The Court finds that Congress has provided two assistance programs aimed at two distinct needs. Assistance for the one need, maintaining the family unit where one parent is unmarried, should not be reduced because a separate need of that parent for education is also present at the same time." 384 F.Supp. at 553.

Hamilton presented an interface between (1) the Secretary of Interior and an especially created series of regional

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34. On a parallel theory a three-judge Court in *Coleman, supra,* footnote 32, rejected a statutory and constitutional challenge to including survivors benefits received by children but restricted to their use and benefit in the income of the household of their mother and stepfather for food stamp purposes since purchasing food for the children was in their best interest.

corporations distributing settlement funds to Alaskan Natives in exchange for their land claims founded upon any aboriginal titles and (2) the defendant Secretary of Agriculture who sought to treat those settlement payments as both "income" and "resources" under the Food Stamp Act. The Ninth Circuit found against the defendant Secretary of Agriculture:

> "We have carefully considered the Secretary's view that Settlement Act payments are 'resources' as that term is defined in the food stamp regulations. But we cannot accept the Secretary's contention that his position is entitled to 'great weight' and that, consequently, his decision must be upheld unless it is manifestly unreasonable. Our obligation is to determine, by interpreting the relevant portions of the Settlement Act, whether Congress intended that settlement funds should be considered as 'resources'. Since the Secretary is not charged with the responsibility for implementing the Settlement Act, his views as to the Act's meaning are entitled to no more than ordinary deference. Courts accord 'great weight' only to the interpretations given a statute by the agency charged with the statute's administration. *Cf. United States v. Florida East Coast Railway Co., 410 U.S. 224, 236 n. 6, 93 S.Ct. 810, 35 L.Ed. 2d 223 (1973).*" 520 F.2d at 713-714 (footnotes deleted).

The impropriety of the Secretary of Agriculture's treatment of educational assistance entitlements for non-subsistence purposes is accentuated by §5(c) of the Food Stamp Act itself.[35] Section 5(c) demonstrates that Con-

35. "[E]ach State agency shall provide that a household shall not be eligible for assistance . . . if it includes an able-bodied adult person between the ages of eighteen and sixty-five (except mothers or . . . bona fide students in any accredited school or training program . . .) who . . . (a) fails to register for employment at a State or Federal employment office." [emphasis added.] 7 U.S.C. § 2014(c).

gress was mindful of the need for the Act to work in tandem with education and training programs and hence expressly excluded from that work registration requirement all "bona fide students in any accredited school or training program".

As was aptly held by the three judge court below:

> "The logical construction of this provision is that Congress intended to provide consideration for those who participated in education programs in an attempt to increase their earnings capacity. This goal cannot be properly furthered if allowances such as the one in question here are used to actually decrease the food purchasing power of participants." *Hein v. Burns,* 402 F.Supp. 398, 405 (S.D. Iowa 1975).

What this Court must inevitably reach in the course of this case is a construction of the term "income" as it is used by the Congress in the Food Stamp Act. Section 5(a) of that Act provides in pertinent part:

> "participation in the food stamp program shall be limited to those households whose income and resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet" 7 U.S.C. § 2014(a)

Just what income inclusions, exclusions, and deductions were intended by Congress to be considered as indispensable to securing access to adequate nutrition has never been elucidated until the present litigation and certainly the Department of Agriculture can hardly be said to have made any contribution to clarity or deserving of deference.[36]

From 1964 and until 1971, USDA was without any delegated rulemaking authority to implement this mandate, as

36. See discussion infra, section IV, p. 33 *et seq.*

such responsibility was vested with the states. Reports of tremendous variation in eligibility practices led the 91st Congress to direct the appellant Secretary to "establish uniform national standards of eligibility" reflecting the directive of §5(a).[37]

Regardless of the Solicitor's argument over the inclusion of non-food items within the "'income' figure which the Secretary used to evaluate need for food stamp assistance"[38], such testimony is neither in fact nor in law (pursuant to the canons of statutory construction) probative of what the Congress intended or what "income" means.

Amici by this brief of socioeconomic as well as legal analysis are urging this Court's examination of all social security and educational assistance legislation which provide vehicles for attaining self-sufficiency, as necessary for a full appreciation of the context of the Food Stamp Act. As Professor Sands urges:

> "this consideration must be more inclusive than the literal inquiry of in pari materia; it must probe basic policy and the pattern and development of the means and procedures used to activate that policy." C. D. Sands, 2A *Sutherland Statutory Construction* § 45.10 (4th ed. 1973) at 33.

The late Mr. Justice Harlan spoke in a similar vein as a prelude to this Court's 1971 overruling of its 1886 decision that maritime law does not provide a cause of action for wrongful death,[39] although the instant case presents no similar question of policy renunciation.

> "The legislature does not, of course, merely enact general policies. By the terms of a statute, it also indicates

37. P.L. 91-671, § 4, 84 Stat. 2048, 2049.

38. Brief for the Appellant, No. 75-1261, at 26 and 27.

39. *The Harrisburg*, 119 U.S. 199 (1886).

> its conception of the sphere within which the policy is to have effect. In many cases the scope of a statute may reflect nothing more than the dimensions of the particular problem that came to the attention of the legislature, inviting the conclusion that the legislative policy is equally applicable to other situations in which the mischief is identical. This conclusion is reinforced where there exists not one enactment but a course of legislation dealing with a series of situations and where the generality of the underlying principle is attested by the legislation of other jurisdictions." *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 392; 90 S.Ct. 1772, 1783, 26 L.Ed. 2d 339, (1971).

There is an unmistakable continuity of legislative purpose to the removal-of-dependency mandate of the Social Security Act, the financial aid provisions of the Higher Education Act, and the student work registration exemption of the Food Stamp Act.

The last was part of the same 1971 amendments to the Food Stamp Act that first gave appellant Secretary of Agriculture the authority and the responsibility to establish nationwide eligibility standards and to whatever extent there may be conflict between the specificity of §5(c) and the generality of § 5(a) the former should prevail.[40]

If there is one indispensable premise of human nutrition it is the immediacy of the impact of the deprivation of food. Once it has begun, hunger cannot long be denied. In light of this fact, if ever there was a social welfare program premised equally upon "current needs" and the "current and actual availability" of the means to meet those needs, surely it should be the food stamp program with its premise of alleviating hunger, undernutrition and malnutri-

40. C.D. Sands, *Sutherland Statutory Construction, supra*, § 46.05 at 57.

tion. Section 2 of the Food Stamp Act of 1964 as amended, 7 U.S.C. §2011.

This Court has previously reviewed the U. S. Department of Health, Education, and Welfare's (DHEW) construction of §402(a)(7) of the Social Security Act,[41] which has analogous phraseology and sustained DHEW's "current availability" regulation.[42]

First, in *Lewis v. Martin,* 397 U. S. 552, 90 S.Ct. 1282, 25 L.Ed. 2d 561 (1970) this Court invalidated California's "man assuming the role of spouse" (MARS) rule which presumed the availability of income from someone who was neither the actual nor adoptive father of children eligible for AFDC entitlements. Such a state agency rule was deemed void under the Supremacy Clause as inconsistent with the DHEW "current availability" regulation.

Then by *per curium* opinion in *Englemen v. Amos,* 404 U. S. 23, 92 S.Ct. 181, 30 L.Ed.2d 143 (1971) this Court

41. Title IV-A provides in pertinent part that state agencies administering AFDC plans

> "shall, in determining the need [of an eligible child], take into consideration any other income and resources [of the child] . . . . as well as any expenses reasonably attributable to the earnings of any such income."
> 42 USC § 602(a) (7).

42. The "current" or "actual" availability concept is traceable at least back to the Social Security Board proceedings of 1940. See "Determination of Need (Revised in Accordance with Minutes of Board Meeting of August 9, 1940), "Memorandum from Geoffrey May, Acting Director, Bureau of Public Assistance to Oscar M. Powell, Executive Director, dated August 28, 1940", *Board Minutes,* August 30, 1940, Board Document No. 3950-f (Typewritten), p. 1.

It was later embodied as DHEW Handbook of Public Assistance Administration (HPAA) Part IV, § 3131.7 and most recently as 45 CFR § 233.20(a)(3)(ii)

> "(ii) . . . in establishing financial eligibility and the amount of the assistance payment . . . (c) only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered . . . ."

affirmed the invalidation of a New Jersey regulation which treated as income for AFDC purposes a stepfather's earnings even though they were not "actually available" for current use by the dependent children.[43]

A number of lower courts have ruled similarly[44] and most recently Judge Parker in *Gutierrez v. Butz,* 415 F.Supp. 827 (D.D.C. 1976) held that in the case of migrant workers, who are without funds when they arrive in an area but anticipate earning income in the future,

> "Although there are no cases interpreting the meaning of 'income' under the Food Stamp Act,
> ". . . . income which is not immediately available should not be imputed to applicants for Food Stamps."
> 415 F.Supp. at 831.

The Solicitor has focused his reading of the statute upon "what" is "income". His analysis fails to be persuasive because of: (1) what Amici have characterized as the continuity of legislative purposes between the removal-of-dependency mandate of the Social Security Act, the student work registration exemption of the Food Stamp Act, and the federal Higher Education Act student assistance directives; (2) the exceeding of his policy-making prerogatives under the Food Stamp Act by the appellant Secretary of Agriculture[45]; and (3) the major oversight of construction

43. See *Shea v. Vialpando,* 416 U.S. 251, 261, 94, S.C. 1746, 1752 and 1753, 40 L.Ed.2d 120, 129 and 130 (1974).

44. E.g., *Green v. Barnes,* 485 F.2d 242 (10th Cir. 1973); *NWRO v. Weinberger,* 377 F.Supp. 861 (D.D.C. 1974); *Barrons v. Bellaire,* 496 F.2d 1187 (5th Cir. 1974); *Kaisa v. Chang,* 396 F.Supp. 375 (D. Hawaii 1975); See also the cases collected in *NWRO v. Mathews,* 533 F.2d 637, 647 (D.C. Cir. 1976).

45. As is evidenced by the discussion of the *Youngstown* case in footnote 33 *supra,* the *Hamilton* decision, and the *Trump v. Butz* decision (D.D.C. No. 76-0933, June 18, 1976, see Brief for the Appellant at 5, footnote 3), all stand for the proposition that there are distinct outside limits to Congress' vesture of rulemaking authority in appellant Secretary under the Food Stamp Act of 1964, as amended.

represented by not addressing the "when" of something being "income".

Eligibility determinations and the level of services to be provided under Title XX of the Social Security Act are made by the state agencies pursuant to the state plan required under §2004 of the Act. The construction urged by Amici is that such awards cannot be considered as "income" for food stamp purposes "when" those sums are not actually and currently available to meet subsistence needs. That is an impossibility as §2002(a)(8) provides in pertinent part:

> "No payment may be made under this section with respect to any expenditure if payment is made with respect to that expenditure under Section 402 or 422 [42 U.S.C. §§ 602 and 622] of this Act." 42 U.S.C. § 1397a (a)(8).

As has been demonstrated *supra* at pp. 13-19, both appellee Hein and amicus Chek met only non-subsistence needs via their educational assistance benefits.[46] As presently established by the appellant Secretary of Agriculture, the food stamp program is one of individualized eligibility determinations. In that context the only relief sought by both plaintiff-appellee Hein and amicus Chek is a disregard of removal-of-dependency benefits which are not actually available for current use for subsistence purposes.[47]

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46. In fact, to do otherwise in the case of amicus Chek would risk perjury as she executed an affidavit pursuant to 20 U.S.C. § 1088g. See footnote 28, supra.

47. This is precisely what the three-judge court below has ordered:

> "[I]t will be ordered that defendants . . . . should be permanently enjoined from including in monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's monthly net income in determining such person's adjusted net income." *Hein v. Burns*, 402 F.Supp. 398, 408.

IV. Appellant Secretary of Agriculture's Rulemaking Herein Is in Derogation of the Administrative Procedure Act.

Professor Kenneth C. Davis, among other commentators, has long lauded the notice and comment procedures of 5 U.S.C. §553 as "one of the greatest inventions of modern government."[48] That section provides for publication in the Federal Register of a general notice of the rulemaking and an opportunity to the interested public to submit written data, views or arguments "with or without opportunity for oral presentation" before the agency, as a prelude to promulgation of the final regulations accompanied by a basis and purpose statement.

These requirements are directed toward the assembling of a

> "focused record for agency decisionmaking which, like a trial court record, could become the record for [judicial] review without further action."[49]

As recently articulated in a number of D.C. Circuit Court of Appeals cases, these statutory requirements include at a minimum, publication of the policy objectives of the agency which underlie a specific proposed rule, along with the empirical findings which lead to the particular formula-

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48. K. C. Davis, *Administrative Law of the Seventies*, § 6.01 at 168 (Bancroft-Whitney, 1976); see Wm. F. Pederson, Jr., "Formal Rules and Informal Rulemaking", 85 Yale L.J. 38, 74-75 (1975)

> "[The newly recognized procedural requirements being read into § 553], together with substantive judicial review, are becoming the most effective and reliable safeguards against arbitary regulation in the whole rulemaking process."

See also S. Wright, "The Courts and the Rulemaking Process: The Limits of Judicial Review", 59 *Cornell L. Rev.* 375 (1974).

49. Pederson, *supra*, footnote 48, at 78.

tion, and a justification of the final rule based upon the comments of interested parties.[50]

The primacy of the requirement of adequate notice in the first instance has been ably assayed in *Wagner Electric Corp. v. Volpe*[51] in the Third Circuit and *NWRO v. Mathews* in the D.C. Circuit.[52] In the former, several complex notices were given and Secretary Volpe contended that they were sufficient to afford the public the opportunity to submit comment upon "the entire subject matter" and that in fact some parties did discuss the issue in question. In the view of the Third Circuit Court of Appeals the fact that some did succeed in reading between the lines was not enough — "others possibly not so knowledgeable also were interested persons" 466 F.2d at 1019. In sum the Administrative Procedure Act requires notice before rulemaking, not after.

In the latter, a U. S. Department of Health, Education, and Welfare rulemaking was invalidated for the want of an adequate administrative record pursuant to 5 U.S.C. § 553.

> "For a regulation of this type to withstand judicial scrutiny, HEW must provide a more precise articulation of findings and relevant factors. Although some commentators have suggested that agency reconsideration in order to provide a satisfactory record may be of little benefit to a challenging party. See Williams,

50. *NWRO v. Mathews*, 533 F.2d 637 (D.C. Cir. 1976); *Rodway v. USDA*, 514 F.2d 809 (D.C. Cir. 1975); *Portland Cement Association v. Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974); *Kennecott Copper Corp. v. EPA*, 462 F.2d 846 (D.C. Cir. 1972).

51. 466 F.2d 1013 (3rd Cir. 1972), accord *City of New York v. Diamond*, 379 Fed. Supp. 503 (S.D.N.Y. 1974).

52. 533 F.2d 637 supra footnote 50.

> "Hybrid Rulemaking" Under the Administrative Procedure Act: A Legal and Empirical Analysis, 42 *U.Chi. L. Rev.* 401, 424-25 (1975), we are convinced that the three-step procedure of section 553, when properly applied, can provide an adequate basis for the substantive review mandated by the arbitrary and capricious standard.
>
> 'Step one of section 553 will yield the agency's initial proposal, its tentative empirical findings, important advice received from experts, and a description of the critical experimental and methodological techniques on which the agency intends to rely. Step two will produce the written or oral replies of interested parties to the agency's proposals and to all the other "step one" materials. And step three will furnish the final rule, accompanied by a statement both justifying the rule and explaining its normative and empirical predicates through reference to those parts of the record developed in steps one and two.' Wright, ["The Courts and the Rulemaking Process: The Limits of Judicial Review"] 59 *Cornell L. Rev.* at 395."

The type of regulation under scrutiny there bore on eligibility for AFDC based upon resource limitations. The case at bar deals with a similar type of regulation bearing on food stamp eligibility. In *NWRO v. Mathews, supra,* the D.C. Court of Appeals held:

> "review of the regulation . . . impossible because the promulgation consistently failed to articulate factual determinations underlying the decisions of the Secretary. For these reasons, we remand the case to the district court for the entry of a judgment declaring the regulation invalid." 533 F.2d at 649.

The same procedural failing pervades the regulation here under substantive review and that defect should take precedence in this Court's deliberations.[53]

The known aspects of the regulatory genesis of the USDA policy here under challenge are as follows:

On January 28, 1974, USDA proposed a major package of regulatory reforms to the food stamp program. 39 Fed. Reg. 3641-48. The preamble to the notice stated *in toto*:

> "Pursuant to the authority contained in the Food Stamp Act of 1964 as amended (78 Stat. 703, as amended; 7 U.S.C. 2011-2025), notice is hereby given that the Food and Nutrition Service, Department of Agriculture intends to revise its regulations governing the operation of the Food Stamp Program for the purpose of incorporating amendments to the Food Stamp Act in Public Law 93-86, approved August 10, 1973; including revisions required by the Supreme Court decision holding that the "tax dependency" and "relatedness" provisions of the Food Stamp Act are unconstitutional; and making other necessary technical changes." 39 Fed. Reg. at 3642.

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53. This procedural defect was explicitly raised by amicus Chek as her third claim for relief in the April 16, 1975 First Amended Complaint (Clerk's Record in *Chek v. Butz*, Ninth Cir. No. 75-2843, vol. 1. pp. 76-96 at 87), amicus Chek asserted a claim under 5 U.S.C. § 706(2). Simultaneously, interrogatories were filed to probe the underpinnings of USDA's policy as it evolved pursuant to the dictates of 5 U.S.C. § 553. See Clerk's Record, vol. I, pp. 69-74. At the district court hearing on April 24, 1975, counsel for California and USDA resisted filing a response to plaintiff Chek's interrogatories and volunteered to let the validity of the Secretary's policy of refusing to recognize income deductions for transportation, school books, and school supplies stand on an administrative record devoid of any policy or empirical basis except those proferred by defendant Secretary of Agriculture's counsel in the midst of active litigation. Cf. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971); *NWRO v. Mathews*, 533 F.2d at 649.

The amendment to 7 C.F.R. § 271.3(c)(1)(iii)(*e*) was to all outward appearances a purely "technical change", and only "necessary" because of renumbering. One sentence —

> "(iii) Deductions for the following household expenses shall be made:
>
> ". . . (*f*) Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits." 36 Fed. Reg. at 14107, July 29, 1971 —

grammatically became two sentences —

> "(iii) Deductions for the following household expenses shall be made:
>
> ". . . (*e*) Educational expenses which are for the tuition and mandatory school fees. This includes those tuition and mandatory school fees which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits." 39 Fed. Reg. 3644, January 28, 1974.

On March 4, 1974, the *Hein* three-judge court for the first time considered and invalidated appellant Iowa's policy of denying an income deduction to students with transportation allowances for school-related commuting costs. *Hein v. Burns*, 371 F.Supp., 1091 (S.D. Iowa, 1974). Intervening as that decision did in the rulemaking process, elicited a *sub rosa* policy decision by the U. S. Department of Agriculture regarding allowable income deductions for costs related to education. Counsel for amici in the course of *Rios v. Butz*, N.D. Calif. No. 74-1372-ACW have discovered and put into evidence an internal memorandum, dated April 3, 1974, from the then Director of the Food Stamp Division of the Food and Nutrition Service (FNS) of USDA, James H.

Kocher to Edward J. Hekman, Administrator of FNS-USDA.[54]

In recommending option number 1 (a recommendation which Heckman approved with his initials), Director Kocher wrote:

> "We have received a number of requests to permit more deductions for costs related to education. Although the recommended approaches vary, the requests are based on a common argument that our treatment of student expenses is inconsistent and inequitable when compared to other household, especially those with trainees or workers. There are currently two court suits challenging our restrictions on educational deductions, and although there is an appeal pending the initial ruling of the court in the Hein-vs-Iowa case was contrary to our policy. We are, nonetheless, still faced with the problem of preventing program abuse by the affluent college student. As we are now in the process of amending the Regulations, and have received a number of comments from State agencies and others urging broader educational deductions, *we felt it appropriate to review our policy and alternatives at this time.*
>
> "... *ALTERNATIVES*
>
> "Breifly [sic], the issues raised in the requests and court challenges include the application of the 10 percent income exclusion to educational grants, permitting child care deductions for students as well as trainees and workers, disregarding vendor payments by welfare agencies for transportation related to education or providing a deduction for such expenses, and including books, supplies, and other costs as allowable educational deductions.

54. This USDA memorandum has been filed with an authenticating affidavit in the Ninth Circuit as part of the record in *Chek v. Butz*, No. 75-2843 and a copy is attached herewith as Appendix A.

> "Our options in handling student expenses are:
>
> "1. Maintain the current policy of restricting educational deductions to tuition and mandatory fees. Congress has shown a continuing interest in the problems created by the 'nonneedy' student and the necessity for control in this area. However, the distinction between education and training is not an easy one to maintain in many instances and will continue to generate problems. In addition, both court suits contend that transportation costs and other expenses can be deducted under the wording of the present Regulations. *In January, we published* for public comment *amendatory language* to clarify that deductions will be allowed only for tuition and mandatory fees, and *this can be even further strengthened in the final Regulations.* However, depending on the final outcome of these suits, we may be forced to abandon our current position." (Emphasis added.)[55]

As a result of this policy review, on July 15, 1974, without prior proposal or notice, the Secretary of Agriculture published a purported final version of § 271.3(c)(1)(iii)(*f*)

> "(iii) Deductions for the following household expenses shall be made (this list is inclusive and no other shall be allowed):
>
> ". . . (*f*) Tuition and mandatory fees assessed by educational institutions (no deductions shall be made for any other educational expenses such as, but not limited to, the expense of books, school supplies, meals at school, and transportation)." 39 Fed. Reg. 25995-26008, at 26003.

USDA sought to rationalize this significant alteration of eligibility policy with the terse comment

> "the educational expenses which may have been deducted have not been changed but have been revised for purposes of clarity". 39 Fed. Reg. at 25997.

55. See appendix A at A1 and A2.

In fact, however, appellant Secretary in removing this so-called ambiguity also voided the pre-existing option of the states to provide broader educational deductions than just tuition and mandatory fees.

The final exclusive income educational deduction catalog of July 15th neither in law nor seemingly in fact a product of the January 28th proposed regulation.[56] Neither in the preamble nor in the body of the January 28th proposed § 271.3(c)(1)(iii)(*e*) is it communicated to "interested persons" that anything other than a renumbering and run-on sentence are being addressed.

As is elaborated upon by the D.C. Court of Appeals in *Rodway, supra,* 514 F.2d at 814, USDA voluntarily by notice waived the potential exemption of 5 U.S.C. § 553(a)(2) in response to Recommendation 16 of Administrative Conference of the United States.[57] The Conference found that—

> "These types of rules may nevertheless bear heavily upon nongovernmental interests. Exempting them from generally applicable procedural requirements is unwise.
>
> "... Removing these statutory exemptions would not diminish the power of the agencies to omit the prescribed rulemaking procedures whenever their observances were found to be impracticable, unnecessary or contrary to the public interest. A finding to that effect can be made, and published in the Federal Register, as to an entire subject matter concerning which rules may

56. Amici qualify only the factual chain of causation as there is plainly a scant administrative record before the Court. There can be no doubt however that the record which does exist—the Kocher-Hekman memorandum—was evoked by the March 4, 1974 decision of the *Hein* three-judge court.

57. 1 *Recommendations and Reports of the Administrative Conference of the United States* 29 and 30, 205-377 (GPO, 1970).

> be promulgated. Each finding of this type should be no broader than essential and should include a statement of underlying reasons rather than a merely conclusory recital."[58]

Assuming arguendo that there was "good cause" within the meaning of 5 U.S.C. § 553(b)(3)(B) neither a "finding" nor "brief statement of reasons" is set forth in the July 15, 1974 basis and purpose statement.

Just as the opportunity for public comment was undermined by USDA's failure to give adequate notice of the final version of 7 C.F.R. § 271.3(c)(1)(iii)(*f*), this Court's scrutiny of the Solicitor's *post hoc* rationalizations in the Brief for the Appellant, is at best awkward means for judicial review of administrative (as opposed to appellate-counsel rationalized) rulemaking.[59]

Professor Davis has also recently argued in favor of Recommendation 74-4 of the Administrative Conference[60] which provides in pertinent part:

> "1. In the absence of a specific statutory requirement to the contrary, the following are the administrative materials that should be before a court for its use in evaluating, or preenforcement judicial review, the factual basis for rules adopted pursuant to informal procedures prescribed in 5 U.S.C. § 553: (1) the notice of proposed rulemaking and any documents referred to therein; (2) comments and other documents submitted by interested persons; (3) any transcripts of oral presentations made in the course of the rulemaking; (4)

58. *Ibid.* at 29 and 30.

59. Unlike the situation presented to this Court in *Citizens to Preserve Overton Park v. Volpe,* 401 U.S. 402, 419 (1970), there are not even "litigation affidavits" in the appellate record which might be considered to constitute the "administrative record".

60. Davis, *Administrative Law of the Seventies, supra,* footnote 48, § 29.01-6, at 669 and 670.

factual information not included in the foregoing that was considered by the authority responsible for promulgation of the rule or that is proffered by the agency as pertinent to the rule; (5) reports of any advisory committees; and (6) the agency's concise general statement or final order and any documents referred to therein. References to the "record" or "whole record" in statutes pertaining to judicial review of rules adopted under Section 553 should be construed as references to the foregoing in the absence of a legislative intent to the contrary. The Conference does not assume that the reviewing court should invariably be confined to the foregoing materials in evaluating the factual basis for the rule." footnote deleted) 3 *Recommendations and Reports of the Administrative Conference of the United States,* 48-51 and 558-565 (GPO, 1974).

Sadly with the exception of item (1), in part (4)[61], and (6), the record for judicial review is wanting.

Although this has been a widely litigated issue[62], Amici are of the view of that *Overton Park* statement of this court that "inquiry into facts is to be searching and careful" (401 U.S. at 416) necessitates a categorical voiding of the regulation in issue. A remand would seem a futile act as no pertinent comments were ever able to be submitted.

In analogous circumstances it has been held —

"Voiding the present regulations on what at first blush appears to be a technicality is not as pointless as it may seem. We believe that the 30-day notice rule

61. That is the Kocher-Hekman memorandum attached hereto as Appendix A.

62. *Turchin v. Butz,* 405 F.Supp. 1263 (D. Minn. 1976); *Rivera v. Santiago,* ..... F.Supp. ..... (D.P.R. Civil No. 76-171, September 15, 1976); *Lakeside v. Oregon Public Welfare Division, CCH Poverty Law Reporter* ¶21,718 (Oregon Court of Appeals, No. 2-25-OZA 897-6, September 10, 1975).

serves an important interest, the right of the people to present their views to the government agencies which increasingly permeate their lives. The interchange of ideas between the government and its citizenry provides a broader base for intelligent decision-making and promotes greater responsiveness to the needs of the people, especially in cases such as this where Congress has only roughed in its program. Indeed, a meaningful pre-publication dialogue between plaintiffs and the Secretary may have even avoided this lawsuit." *Kelly v. U.S. Department of Interior,* 339 F. Supp. 1095, 1102 (E.D. Calif. 1972)[63]

The right of adequate notice is even more institutionally key. Since the defendant-appellant Secretary has failed to publish notice of the regulation challenged herein, it of course follows that the regulation is additionally infirm inasmuch as the second and third requirements of § 553 are also unmet. If prior notice was not published, then no comments were, or could have been solicited. And with no comments nor any statement of "basis and purpose" based on an analysis of such comments, the entirety of § 553 has been abrogated.

V. Conclusion.

In sum, the food stamp regulation herein fails utterly to meet the most elementary demands of the Administrative Procedure Act and must therefore, be held null and void.

63. Accord *Anderson v. Butz,* ..... F.Supp. ..... (E.D. Calif. No. S-75-401, 1975), 37 Ad.L.2d 852; *Lewis v. Weinberger,* 415 F.Supp. 652, 659 (D. N.M. 1976).

Alternatively, the judgment of the district court should be affirmed on statutory grounds.[64]

October 22, 1976
San Francisco, California

Respectfully submitted,

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64. Counsel for amici wish to acknowledge the invaluable assistance of Professor Barbara R. Bergmann, Sandra Fulmer, Michael Gill, Barbara Mack Heller, F. Allen Pang, and Valerie Stewart.

Appendix

United States Department of Agriculture
Food and Nutrition Service

Washington, D.C. 20250
Date: Apr 3 1974

FSP — Education Deductions
Edward J. Hekman
Administrator

PROBLEM

We have received a number of requests to permit more deductions for costs related to education. Although the recommended approaches vary, the requests are based on a common argument that our treatment of student expenses is inconsistent and inequitable when compared to other households, especially those with trainees or workers. There are currently two court suits challenging our restrictions on educational deductions, and, although there is an appeal pending the initial ruling of the court in the Hein-vs-Iowa case was contrary to our policy. We are, nonetheless, still faced with the problem of preventing program abuse by the affluent college student. As we are now in the process of amending the Regulations, and have received a number of comments from State agencies and others urging broader educational deductions, we felt it appropriate to review our policy and alternatives at this time.

BACKGROUND

In 1971 when we established the first national eligibility criteria, a conscious decision was made to restrict educa-

tional deductions to tuition and mandatory fees in an effort to control student participation. The Food Stamp Program was not to be used as an aid to education. This policy was in line with Congressional attitudes as evidenced by the tax dependency and similar provisions.

At the same time, however, work incentives were provided to wage earners in the form of income exclusions (10 percent of earned income up to $30 per household), child care deductions, and resources exemptions. Trainees received the same work incentives because certain training allowances especially under the WIN and Manpower Training Programs may approximate wages in on-the-job training situations. Unfortunately, these same programs also provide training allowances to participants attending high school, vocational school and even college. These trainees receive both the deductions allowed for education and the income disregards and deductions granted wage earners, thereby creating inequities when comparing their situation to that of their fellow students.

ALTERNATIVES

Briefly, the issues raised in the requests and court challenges include the application of the 10 percent income exclusion to educational grants, permitting child care deductions for students as well as trainees and workers, disregarding vendor payments by welfare agencies for transportation related to education or providing a deduction for such expenses, and including books, supplies, and other costs as allowable educational deductions.

Our options in handling student expenses are:

1. Maintain the current policy of restricting educational deductions to tuition and mandatory fees. Congress has

shown continuing interest in the problems created by the "nonneedy" student and the necessity for control in this area. However, the distinction between education and training is not an easy one to maintain in many instances and will continue to generate problems. In addition, both court suits contend that transportation costs and other expenses can be deducted under the wording of the present Regulations. In January, we published for public comment amendatory language to clarify that deductions will be allowed only for tuition and mandatory fees, and this can be even further strengthened in the final Regulations. However, depending on the final outcome of these suits, we may be forced to abandon our current position.

2. Permit additional deductions for education related costs. Such additional costs could be allowed only for specified items or by broadening the educational deduction across the board. The following summarizes the various income factors which could be affected by a change in educational deductions:

a. The 10 percent income exclusion could be extended to include educational grants as well as wages and training allowances. This would provide the household with an allowance for related costs such as transportation without involving a specific deduction for such costs. In addition, there would still be the $30 limit per household per month regardless of the mix of workers, students, and trainees. However, the 10 percent would only apply to specific income for education such as grants, scholarships, fellowships, loans, etc. Students without such income would not get a deduction even though they incur the same expenses. Thus, under this alternative, inequities could be broadened rather than eliminated.

b. Education expenses could be broadened to include other related costs in addition to tuition and mandatory fees. Specific items could be added such as books and transportation costs; however, we would have to justify why only the specified costs are deductible and not others. Moreover, if a deduction is allowed for the actual costs of these related expenses, the student would have an advantage over workers and trainees whose deduction for similar expenses is limited to 10 percent of associated income to a maximum of $30.

c. The deduction for child care expenses can be broadened to include education as well as work or training purposes. Child care is recognized as an extraordinary work related expense and is therefore allowed as a separate deduction from other work related costs. It can likewise be a separate cost of education and deductible on its own merits regardless of what other expenses are or are not allowed. This deduction would only benefit the adult student with a family. It is particularly difficult to maintain a distinction between students and trainees for child care purposes in view of their similar and often identical circumstances.

RECOMMENDATION

We recommend maintaining our current policy (Alternative 1) as we are opposed to a general broadening of educational deductions. The administrative difficulties and inequities of broadening educational deductions are such that we would prefer not to initiate change in this area unless required to by a court decision. We realize the ambivalent position of trainees will continue to create

inequities and make many decisions in this area appear arbitrary. We would prefer to eliminate the special treatment of trainees rather than extend such treatment even further by including all students. However, having lost this battle once already to WIN advocates, we do not feel this alternative is feasible at the present time.

We would however recommend one exception to this approach. We recommend that child care deductions be allowed for the adult students with fam"'es (Alternative 2 c).

If you concur in the above recommendations, we will proceed with the appropriate language for incorporation into the final Regulations.

James H. Kocher
Director
Food Stamp Division

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